

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 October 2003

CASE NO.: 2002-ERA-0037

In the Matter of:

**NELSON DAVID DUNCAN,
Complainant,**

v.

**BURNS INTERNATIONAL SECURITY,
Respondent.**

RECOMMENDED FINAL ORDER OF DISMISSAL

On September 22, 2003, the parties submitted to the undersigned a "Stipulation for Dismissal" pursuant to which the parties agree to dismissal of this action with prejudice under Rule 41(a) of the Federal Rules of Civil Procedure and 29 C.F.R. § 18.1(a).

As it was unclear from the submissions of the parties whether a settlement was involved, on September 23, 2003, I issued an Order Requiring Response, which required the parties to jointly or separately advise the undersigned whether the dismissal was being sought pursuant to any oral or written settlement agreement, including settlements entered into in other forums or any implicit or explicit agreement to pay any sum of money or take other action, within fifteen (15) days; the parties were also ordered to provide me with a copy of any such agreement or, if the agreement has not been reduced to writing, with a summary of its provisions. In this regard, the Energy Reorganization Act (ERA) requires that settlements in ERA whistleblower cases be reviewed to determine whether they are fair, adequate and reasonable. *Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989) (Order) *citing* 42 U.S.C. § 5851(b)(2)(A). *Compare Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in JTP case when parties have stipulated to dismissal under Rule 41(a)(1)(ii), FRCP, and contrasting ERA cases, which require approval of settlements.

In a response of September 30, 2003, the Employer, through counsel verified that no settlement was involved. Counsel explained that the dismissal was being made with prejudice in view of substantial costs, lost time, and attorney fees that the Employer has incurred in the course of this litigation. The Complainant agreed that the dismissal would be with prejudice and signed a stipulation to that effect. Accordingly, good cause having been shown,

ORDER

IT IS HEREBY ORDERED, that this case be, and hereby is, **DISMISSED WITH PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE: This Recommended Final Order of Dismissal will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. To be timely filed, a petition for review must be filed **within ten (10) business days** of the date of this Recommended Decision and Order and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7, 24.8.